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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re application of: Barry Allan Fisher, et al.

Attorney Docket No.: IDTXP044

Application No.: 09/698,624

Examiner: Sathyanaraya V. Perungavoor

Filed: October 27, 2000

Group: 2624

Title: PORTABLE APPARATUS FOR  
IDENTIFICATION VERIFICATION

Confirmation: 4935

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CERTIFICATE OF EFS-WEB TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically through EFS-WEB to the Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450 on August 17, 2011.

Signed: /Latonia Ervin/  
Latonia Ervin

**APPLICATION FOR PATENT TERM ADJUSTMENT**  
**UNDER 37 C.F.R. §1.705**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the Notice of Allowance, mailing date May 18, 2011, and in accordance with 37 C.F.R. §1.705, Applicants respectfully request reconsideration of the period of adjustment. Specifically, Applicants request that the patent term be additionally adjusted by 757 days under 35 USC § 154(b)(1)(B) and 37 C.F.R. §§ 1.702(b) and 1.703(b) based on failure to issue patent within three years of the actual filing date of the application.

**No. of days in excess of 3 years = October 27, 2003 (3 years after October 27, 2000 filing date) to November 16, 2006 (1<sup>st</sup> RCE cutoff date) = 1116 days.**

***Statement of Fact, as Required by 37 C.F.R. §1.705(b)(2)***

Applicants respectfully submit that the patent term should be adjusted to account for a one-day term extension for every day greater than three years after the filing date that it takes for the patent to issue under 35 USC § 154(b)(1)(B) and 37 C.F.R. §§1.702(b) and §1.703(b) in view of the decision in *Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir. Jan. 7, 2010).

Under *Wyeth*, the proper formula for determining PTA is: delay under 35 USC § 154(b)(1)(A) ("A delay") plus delay under 35 USC § 154(b)(1)(B) ("B delay") less (any part of A delay that overlaps with B delay) less applicant's delay. In the present application, this is as follows:

**696 days A delay + 1116 days B delay – 18 days overlap between A delay and B delay (3 year date of 10/27/03 to 1<sup>st</sup> Office Action mail date of 11/14/03) – 1037 days Applicants’ delay = 757 days.**

In view of the foregoing, it is respectfully submitted that the patent term be adjusted under 35 USC § 154(b)(1)(B) and 37 C.F.R. §§1.702(b) and §1.703(b).

This patent application is not subject to the terminal disclaimer. Applicants submit that there were no additional circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination except as calculated by the Patent Office and accounted for in the 696 days of A delay.

The Commissioner is hereby authorized to charge the fee for filing a request for reconsideration of the patent term adjustment pursuant to § 1.705 set forth in §1.18(e) of \$200.00 and any other fees which may be required or credit any overpayment to Deposit Account No. 504480 (Order No IDTXP044).

Applicants respectfully request that the patent term adjustment be reconsidered.

Respectfully submitted,  
Weaver Austin Villeneuve & Sampson LLP

/Denise Bergin/

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